LEONG TEIK FOO & 51 ORS.

v.

PENGARAH TANAH DAN GALIAN, NEGERI KEDAH DARULAMAN & ANOR.

HIGH COURT MALAYA, ALOR SETAR
TUAN MOHD HISHAMUDIN BIN MOHD YUNUS J.
[ORIGINATING SUMMONS NO. 24-238-1994]
30 NOVEMBER 1994

LAND ACQUISITION : *State Authority compulsorily acquiring two pieces of land - Plaintiffs claiming to be lawful occupiers of the lands - Plaintiffs claiming that they were not served with notice as required by s. 11 Land Acquisition Act 1960 - Meaning of "occupier" under s. 11 of the Act - Plaintiffs seeking declaration that acquisition null and void - Whether plaintiffs were lawful occupiers of the lands in question.*

LAND LAW : *State Authority compulsorily acquiring land - Land in question Malay Reservation Land - Plaintiffs claiming to be lawful occupiers of the land - Whether plaintiffs had any interest in the land - Consideration of s.6, Kedah Malay Reservation Enactment.*

WORDS & PHRASES JUDICIALLY DEFINED : *"occupier" - Land Acquisition Act 1960, s. 11.*

ADMINISTRATIVE LAW : *Application for declarations - Delay in making application - Whether material.*

The plaintiffs claimed to be the lawful occupiers of two pieces of Malay Reservation Land acquired by the State Authority pursuant to the provisions of the Land Acquisition Act 1960 (the Act). The plaintiffs complained that they were not given the statutory notice as required by s. 11 of the Act and sought declarations, *inter alia*, that the said acquisitions were null and void.

The question that arose for decision was whether the plaintiffs had proved on a balance of probability that they were the lawful occupiers of the land at the time of the acquisition.

Held:

[1] Although it was common ground that the acquisitions related to two separate pieces of land, there is nothing in the plaintiffs' affidavit as to who is occupying which land. Although the plaintiffs stated that they were lawful occupiers of the land at the material time, seeing as how there were two acquisitions, the plaintiffs had failed to state who was relying on 11 April 1974 as the material time for the acquisition and who was relying on 3 August 1972 as the material time.

[2] Far from being informative and precise, the affidavits filed on behalf of the plaintiffs appear to be made in a slipshod manner. In this regard, even the procedural propriety of the plaintiffs joining together and filing a single action without the leave of the Court, when it is common ground that there were two different pieces of land and two different acquisition exercises involved, must be questioned.

[3] The documents submitted on behalf of the plaintiffs to substantiate their claim that they were lawful occupiers did not constitute sufficient evidence of lawful occupation. In the circumstances it was clear that the plaintiffs were not the occupiers of the lands at the material times.

[4] Even if the plaintiffs were the lawful occupiers, it was not necessary that they be served with the notice under s. 11 of the Act as they do not have any interest in the lands. Even assuming that there was a purported oral tenancy agreement between each of the plaintiffs and the respective landowners, such an agreement was void and did not confer on any of the plaintiffs any interest in the land by virtue of s. 6 of the Kedah Malay Reservation Enactment.

[5] The word "occupier" in s. 11 of the Act does not refer to a person who is merely in physical occupation of the land or who is merely a licensee. "Occupier" in the said section means an occupier who has an interest in land. Since the tenancy agreements, if any, were void, the plaintiffs, prior to the acquisition, were only mere licensees. The plaintiffs had no interest whatsoever in the land and consequently were not "occupiers" for the purpose of s. 11 of the Act.

[6] Even assuming that the plaintiffs were occupiers having an interest in the land, they have delayed in seeking this declaration. They have come to the Court very late and the delay in making the application was not sufficiently explained.

[Application dismissed with costs]

Case referred to:
Eshah binti Sa'at v. Meriam binti Sa'at [1975] 2 MLJ 97 ***(refd)***

Legislation referred to:
Land Acquisition Act, 1960, ss. 8, 11, 22
Rules of the High Court 1980, O. 15, r. 4
Kedah Malay Reservation Enactment, s. 6

For the plaintiffs - Mohideen Abdul Kader; M/s Mohideen & Partners
For the defendant - Y.B. Tuan Hassan Lah, Penasihat Undang-Undang Negeri Kedah.

JUDGMENT

Mohd Hishamudin bin Mohd Yunus J:
In this action, originally there were 52 plaintiffs. However, before the first day of the hearing (19 April 1994), 13 of them filed in a notice of discontinuance. Accordingly, I have struck off their action. The remaining 39 plaintiffs are the first, second, third, fifth, sixth, seventh, eighth, tenth, eleventh, fourteenth, fifteenth, seventeenth, eighteenth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-seventh, twenty-eighth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth, thirty-ninth, forty-third, forty-fourth, forty-fifth, forty-sixth, forty-seventh, forty-eighth, forty-ninth, fiftieth and the fifty-first plaintiff.

I shall give a brief account of the background to this action. In the District of Kota Setar, there were two pieces of land. The first piece is Lot. 1877, SP Kecik 6105 (hereinafter shall be referred to as "the first piece of land") which had an area of slightly more than an acre. The owner was on Haji Lidin bin Haji Abd. Manan. This piece of land was acquired pursuant to the Land Acquisition Act, 1960 (hereinafter referred to as the "LAA") by the State Authority for the purpose of a public housing scheme *vide* Kedah State Gazette No. 149 dated 11 April 1974. At the time of the publication of the notification under s. 8 of the LAA, the land was charged to How Gaik Seng, How Hiang Weng, Goh Bah Kwang, Goh Bak Keng and Nev Siam Sneah (also known as Ong Peng Kow). The State Authority took formal possession of this land pursuant to s. 22 of the LAA on 1 April 1989.

The other piece of land was originally known as Lot No.3264 Geran No. 1841 (hereinafter shall be referred to as "the second piece of land") owned by Hajjah Ah binti Mohd Hashim, Sharifah Khatijah bt. Syed Mohamad, Syed Sofi bin Syed Mansur Aljafree, Sharifah Salamah binti Syed Mansur Aljafree, Sharifah Aishah binti Syed Mansur Aljafree. This piece of land which had an area of slightly more than 42 acres was acquired *vide* Kedah State Notification No.313 dated 3 August 1972 for the purpose of a low cost housing scheme. This piece of land was taken possession of by the State Authority on 14th November, 1972. Subsequently, on 22 August 1988 it was divided into two lots namely, Lot 5458 GM8568 and Lot 5459 GM8569.

It is important to note that both pieces of land were Malay Reserve Land governed by the Kedah Malay Reservation Enactment (No.63).

In this originating summons, the relief prayed for are (as stated in the prayers of the originating summons):

(a) Satu perisytiharan bahawa prosiding pengambilan tanah tersebut dengan premis-premis plaintif-plaintif adalah batal dan tidak sah (null and void)

(b) Satu perisytiharan bahawa plaintif-plaintif berhak menduduki di atas bahagian tapak-tapak tanah tersebut.

(c) Satu perisytiharan bahawa semua defendan tidak berhak meroboh/meruntuh premis plaintif-plaintif.

The applicants claimed that at the material times they were the lawful occupiers of the lots and they were not served with a notice under s. 11 of the Land Acquisition Act, 1960. This section stipulates:

11. Services of notices.

(1) The collector shall, in addition to giving public notice as required by sub-section (1) of s. 10, in respect of all scheduled land specified in every notice in Form E, served copies of such notice in the manner prescribed by s. 53, upon:-

(a) the occupier of such land;

(b) the registered proprietor of such land, where he is not the occupier thereof;

(c) any person having registered interest in such land;

(d) any person whom he knows or has reason to believe to be interested therein.

Provided that no omission or failure to serve such notice upon any person falling under paragraph (b) or (c) shall invalidate any enquiry held pursuant to the notice or any reward made upon the conclusion of the enquiry if, by reason of damage or deterioration of the register document of title to such land, such person cannot be ascertained.

In support of their claims the applicants rely on the affidavit of their 'agent' ("wakil") one Jayagopal a/l Adaikalam (encl. 2) and their respective affidavits (encls. 2-6, 8-11, 13-14, 17-18, 20-21, 24-28, 30-31, 33-42, 46-54).

In paragraph 1 of his affidavit, the said Jayagopal states that he is a representative ("waki") of the plaintiffs, that he is authorised to make the affidavit on their behalf and that all the facts stated in the affidavit are based on his own knowledge. In paragraph 2 of the affidavit it is stated that at the material time the plaintiffs were the possessor ("pemilik") or tenant ("penyewa") and had the right of possession ("berhak memiliki") over all the premises situate on the land known as Lot 1877 Surat Putus 6105 Mukim Pengkalan Kundur, Daerah Kota

Setar and Lot 5458 Geran No. 8568 Mukim Pengkalan Kundur Daerah Kotar Setar Kedah. This paragraph then sets out the address of each of the plaintiffs. Paragraph 3 states that, all the plaintiffs, except for the forty-fifth and the forty-ninth plaintiffs , were, at the material time, tenants of 'lots" ("penyewa tapak") situate on the land, over which their respective houses were built. It is alleged that the forty-fifth and forty-ninth plaintiffs were tenants of a building situate on the land and which had the address 15-D. Paragraph 4 states that the premises were acquired under the LAA, and that the plaintiffs as owners and occupiers of the premises, and therefore as persons having interests in the premises, were not served with any notices as required under the Act. In paragraph 8 it is stated that the plaintiffs or the occupiers before them had been in occupation of the premises for 65 years.

An important issue in this application is this:

> Have all the applicants proved to the Court on a balance of probability that they were the lawful occupiers of the land at the material times i.e. 3 August 1972 and 13 April 1974.

The learned State Legal contends that they have not. I have scrutinised the affidavit of Encik Jayagopal and the respective affidavits of the applicants. I find that the affidavits are vague and too general in nature as well as lacking in facts.

First, it must be appreciated that there were two different pieces of land involved, not just one. Each piece had its own title number and each had a different owner (or owners). Each piece of the land was acquired on a different date. Needless to say, there were two different gazette notifications. The purpose of acquisition was different: one was for "public housing scheme" while the other was for 'low cost housing scheme". Yet, despite the fact that the plaintiffs appear to acknowledge that there were two different pieces of land, it is remarkable that it is not stated in the plaintiffs' affidavit who is occupying which land. The plaintiffs in their application have simply lumped the two pieces of land together. True it is that the plaintiffs in paragraphs 2 and 3 of their affidavit (enc. 2) mention "the material time" ("pada masa material"). But what is meant by "material time"? It does not suffice for the plaintiffs merely to aver that they or the occupiers before them had been in occupation of the land for 65 years. The pertinent question is: who among the 39 of them are alleging that they were lawfully occupying the first piece of land and hence relying on 11 April 1974 as the material time, and who among them are alleging that they were lawfully occupying the second piece of land and hence relying on 3 August 1972 as the material time? All this is not made clear. With respect, far from being precise and informative, the affidavits appear to be made in a slipshod manner. Indeed, in this regard, I would even question the procedural propriety of the plaintiffs joining together and filing a single action without the leave of this Court when it is common ground that there were two different pieces of land and two different acquisition exercises involved (see O. 15, r. 4 of the Rules of the High Court).

Secondly, in order to substantiate their claim that they were the lawful occupiers of the lands they have submitted various kinds of documents. Some submitted a photostat copy of their identification card. Some submitted a photostat copy of an official receipt or a certificate of registration issued by the Registrar of Business; some submitted a photostat copy of their birth certificate; some submitted a photostat copy of payment of rental receipts; and some submitted a photostat copy of Bil Cukai Pintu issued by the Majlis Perbandaran Kota Setar. However, I lam not satisfied that any of these documents constitute sufficient evidence of lawful occupation.

For the reasons given above, I am not satisfied that the plaintiffs are the lawful occupiers of the lands at the material times.

Even assuming that they were the lawful occupiers, in my view, they need not be served with the notices. For, in my opinion, they do not have any interest in the lands. I am of such a view because those lands were Malay Reservation and the plaintiffs are non-Malays. Assuming that there was a purported oral tenancy agreement between each of three plaintiffs and the respective landowners, such an agreement was void and did not confer on any of the plaintiffs any interest in the land by reason of s. 6 of the Kedah Malay Reservation Enactment. This provision states:

> 6. (1) Save as hereinafter provided in this Enactment, where any Reservation land is held under a document of title by a Malay, no right or interest therein shall vest, whether by transfer, sale in execution of a decree, sale at the instance of a chargee or otherwise, in any person who is not a Malay and where any Reservation land is held under a document of title by a Siamese no right or interest therein shall vest, whether by transfer, sale in execution of a decree, sale at the instance of a charge or otherwise in any person who is not either a Malay or a Siamese.
>
> (2) Any document or agreement purporting to vest in any person any right or interest contrary to the provisions of sub-section(1) shall be void.

Since the tenancy agreements, if at all there were any, were void, the plaintiffs were therefore, prior to the acquisition, only mere licensees. They had no interest whatsoever in the land. To my mind, they were not "occupiers" for the purpose of s. 11 of the LAA. In my judgment, the word "occupier" in that section does not refer to a person who is merely in physical occupation of the land or who is merely a licensee. "Occupier" in that provision means an occupier who has an interest in the land.

Even assuming that the plaintiffs were occupiers having an interest in the land, still the plaintiffs have delayed in seeking this declaration. They have come to this Court very late. They had filed this application for a declaration on 16 March 1994. If the Court were to take 3 August 1972 or 11 April 1974 as the material dates they were about twenty years late and they have no sufficiently explained to this Court why they were late in making this application. True it is that Encik Jeyagopal has stated in his affidavit that the plaintiffs were not served with the notice under s. 11, but in none of the affidavits is it stated the plaintiffs were not aware of the acquisition because of the non-service. In any event the plaintiffs were served with a notice by the Pentadbir Tanah Daerah Kota Setar dated 6th May 1992 prohibiting them from building any house on the lands, and even if the Court were to take this date, there had been a delay of one year and ten months and no explanation has been given for this delay. In *Eshah binti Sa'at v. Meriam binti Sa'at* [1975] 2 MLJ 97, Abdul Razak J. held:

> There has also been a considerable delay in asking for the declaration. No doubt time unlike in certiorari is no bar to a declaration. But undue laches should be a bar to a declaration, otherwise we will have seen the last of the remedy of certiorari.
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> There has been a lapse of two years since the Collector made his award before the plaintiff made the application for a declaration to impugn it.

Accordingly, this application is dismissed with costs.